

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**GREYSTONE HOUSING  
FOUNDATION, INC., a California Non-  
Profit 501(c)(3) Corporation,**

Plaintiff,

v.  
FANTASY HOLDINGS, LLC, an  
Arizona Limited Liability Company;  
NARONGYOS SANTADSIN, an  
Individual; DOES 1 THROUGH 10,  
inclusive.

## Defendants.

Case No.: 16-CV-0300-AJB-DHB

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS FOR LACK  
OF PERSONAL JURISDICTION  
AND DISMISSING ACTION WITH  
PREJUDICE**

(Doc. No. 28)

Presently before the Court is Defendants Fantasy Holdings, LLC’s (“Fantasy”) and Narongyos Santadsin’s (“Santadsin”) (collectively, “Defendants”) motion to dismiss the amended complaint for lack of personal jurisdiction, improper venue, and insufficient service of process and, alternatively, to transfer venue. (Doc. No. 28.) Plaintiff Greystone Housing Foundation, Inc. (“Greystone”) opposes the motion. (Doc. No. 46.) Having reviewed the parties’ legal arguments in light of controlling legal authority, and pursuant to Local Civil Rule 7.1.d.1, the Court finds the matter suitable for decision on the papers, without oral argument. For the reasons set forth below, the Court **GRANTS** Defendants’

1 motion and **DISMISSES** this case **WITH PREJUDICE**.

2 **BACKGROUND**

3 This dispute arises from Defendants' alleged failure to repay monies borrowed  
4 pursuant to a promissory note ("note") that named Greystone as the payee. Greystone is a  
5 California non-profit corporation with its principal place of business in San Diego,  
6 California. (Doc. No. 26 ¶ 1.)<sup>1</sup> Fantasy is an Arizona limited liability company with its  
7 principal place of business in Phoenix, Arizona. (*Id.* ¶ 2.) Santadsin is an individual  
8 domiciled in Arizona. (*Id.* ¶ 3.) He is Fantasy's manager and sole member. (*Id.* ¶ 4.)

9 On July 30, 2009, Defendants signed the note, through which they borrowed  
10 \$500,000 from Greystone. (*Id.* ¶ 10; Doc. No. 26-1 at 2.) Fantasy signed the note (through  
11 Santadsin) as borrower; Santadsin signed the note as guarantor. (Doc. No. 26 ¶ 10; Doc.  
12 No. 26-1 at 2.) Fantasy agreed to make interest-only payments to non-party Kent Casady  
13 ("Casady") for five years, after which the principal would become due and payable to  
14 Greystone. (Doc. No. 26 ¶ 11; Doc. No. 26-1 at 2.) Pursuant to the note, Greystone financed  
15 and disbursed the funds to Defendants. (Doc. No. 26 ¶ 10.)

16 On July 30, 2014, the note matured, and the entire \$500,000 became due and  
17 payable. (*Id.* ¶ 12.) Defendants failed to make this payment. (*Id.*; Doc. No. 28-2 ¶ 14.)  
18 Because of this default, Greystone instituted this lawsuit by filing the original complaint  
19 on February 5, 2016, alleging contract-related claims. (Doc. No. 1.) Defendants  
20 successfully moved to dismiss the original complaint for lack of personal jurisdiction.  
21 (Doc. Nos. 5, 15.) On December 5, 2016, Greystone filed an amended complaint. (Doc.  
22 No. 26.) Defendants move to dismiss this complaint, again asserting lack of personal  
23 jurisdiction, as well as arguing improper venue and insufficient service of process. (Doc.  
24 No. 28.) The Court granted Greystone limited jurisdictional discovery to assess the  
25 existence of personal jurisdiction over Defendants in this case. (Doc. No. 32.) Following

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<sup>1</sup> The Court cites to the blue CM/ECF-generated document and page numbers located at  
the top of each page.

1 such discovery, Greystone filed an opposition, and Defendants replied. (Doc. Nos. 46, 47.)  
2 This order follows.

3 **LEGAL STANDARD**

4 “Personal jurisdiction over a nonresident defendant is tested by a two-part analysis.”  
5 *Chan v. Soc’y Expeditions, Inc.*, 39 F.3d 1398, 1404 (9th Cir. 1994). The exercise of  
6 jurisdiction must satisfy the requirements of both the applicable state long-arm statute and  
7 federal due process. *Id.* at 1404–05. California’s long-arm statute is coextensive with the  
8 limits of due process. Cal. Civ. Proc. § 410.10; *Doe v. Unocal Corp.*, 248 F.3d 915, 923  
9 (9th Cir. 2001), *abrogated on other grounds as recognized in Williams v. Yamaha Motor*  
10 *Co.*, 851 F.3d 1015 (9th Cir. 2017). Accordingly, the Court need only consider the  
11 requirements of due process. *Fed. Deposit Ins. Co. v. British-Am. Ins. Co.*, 828 F.2d 1439,  
12 1441 (9th Cir. 1987).

13 Due process requires that a nonresident defendant have certain minimum contacts  
14 with the forum state such that the exercise of jurisdiction does not offend traditional notions  
15 of fair play and substantial justice. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).  
16 This test may be satisfied in one of two ways. *Decker Coal Co. v. Commonwealth Edison*  
17 *Co.*, 805 F.2d 834, 839 (9th Cir. 1986). If the defendant’s contacts with the forum state are  
18 substantial or “continuous and systematic,” *Helicopteros Nacionales de Colombia, S.A. v.*  
19 *Hall*, 466 U.S. 408, 415–16 (1984), the court may properly exercise general jurisdiction  
20 over the defendant “even if the cause of action is unrelated to the defendant’s forum  
21 activities,” *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1287 (9th Cir. 1977).  
22 Where the defendant’s contacts with the forum state will not support the court’s exercise  
23 of general jurisdiction, “jurisdiction may nonetheless be proper as an assertion of limited  
24 [i.e., specific] jurisdiction if there is a strong relationship between the quality of the  
25 defendant’s forum contacts and the cause of action.” *Decker Coal Co.*, 805 F.2d at 839  
26 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985)).

27 The plaintiff bears the burden of establishing the court’s personal jurisdiction over a  
28 defendant. *Unocal Corp.*, 248 F.3d at 922. On a motion to dismiss, the Court may decide

1 the issue of personal jurisdiction on the basis of affidavits and documentary evidence by  
2 the parties, or hold an evidentiary hearing regarding the matter. *See Data Disc, Inc.*, 557  
3 F.2d at 1285. If the motion is based on the former, the plaintiff need only make a prima  
4 facie showing of facts establishing personal jurisdiction. *Id.* Uncontroverted allegations in  
5 the complaint are accepted as true, and conflicts between parties over statements contained  
6 in affidavits must be resolved in the plaintiff's favor. *Unocal Corp.*, 248 F.3d at 922.

7 **DISCUSSION**

8 Defendants seek dismissal pursuant to Rule 12(b)(2), (3), and (5) for lack of personal  
9 jurisdiction, improper venue, and insufficient service of process, respectively. (Doc. No.  
10 28.) Alternatively, Defendants ask the Court to transfer this case to the District of Arizona  
11 under 28 U.S.C. § 1406(a) to cure venue or 28 U.S.C. § 1404(a) for the convenience of the  
12 parties. (*Id.*) As explained below, the Court finds it lacks personal jurisdiction over  
13 Defendants; accordingly, the Court does not reach Defendants' remaining arguments. *Cf.*  
14 *Julio v. Wells Fargo Bank*, No. 11-CV-00696-LHK, 2011 WL 11048327, at \*2 (N.D. Cal.  
15 July 21, 2011) (declining to reach defendant's personal jurisdiction argument after  
16 dismissing action for improper venue).

17 ***I. General Jurisdiction***

18 Defendants first argue that there is no general jurisdiction over them because they  
19 are both domiciled in Arizona and otherwise do not have the requisite contacts with  
20 California. (Doc. No. 28-1 at 8–9; Doc. No. 47 at 8–17.) Greystone responds that  
21 Defendants do significant business in California through Kodi Distributing, LLC (“Kodi”)  
22 and the operation of the leluv.com website. (Doc. No. 46 at 11–16.)

23 “A court may assert general jurisdiction over foreign (sister-state or foreign-country)  
24 [defendants] to hear any and all claims against them when their affiliations with the State  
25 are so ‘continuous and systematic’ as to render them essentially at home in the forum  
26 State.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (citing  
27 *Int'l Shoe Co.*, 326 U.S. at 317). “This is an exacting standard, as it should be, because a  
28 finding of general jurisdiction permits a defendant to be haled into court in the forum state

1 to answer for any of its activities anywhere in the world.” *Schwarzenegger v. Fred Martin*  
2 *Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004).

3 General jurisdiction over an individual is permissible only where he has been served  
4 with process while voluntarily in the forum, is domiciled in the forum, or consents to the  
5 court’s jurisdiction. *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 880–81 (2011)  
6 (Kennedy, J., plurality); *see Pennoyer v. Neff*, 95 U.S. 714, 722 (1877). “With respect to a  
7 corporation, the place of incorporation and principal place of business are ‘paradig[m] . . .  
8 bases for general jurisdiction.’” *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014)  
9 (citation omitted). Outside of these paradigm bases, only “in an exceptional case” should a  
10 court find a corporation’s operations in the forum to be “so substantial and of such a nature  
11 as to render the corporation at home in that State.” *Id.* at 761 n.19.

12 Greystone first argues that Defendants’ marketing strategy and sales to California  
13 consumers through leluv.com and third-party retailers, such as Amazon, eBay, and Etsy,  
14 demonstrate Defendants have purposefully availed themselves of California. (Doc. No. 46  
15 at 10.) Given that Defendants’ sales and advertising efforts have no bearing on the instant  
16 dispute—a \$500,000 loan to Defendants on which they have purportedly defaulted—  
17 Defendants’ sales efforts in California are relevant to this motion only to the extent those  
18 efforts serve as a basis for general jurisdiction. *See Helicopteros Nacionales de Colombia*,  
19 S.A., 466 U.S. at 414 (stating due process is not offended by a forum’s exercise of general  
20 jurisdiction over a defendant “[e]ven when the cause of action does not arise out of or relate  
21 to the foreign corporation’s activities in the forum” where “there are sufficient contacts  
22 between the State and the foreign corporation”); *Decker Coal Co.*, 805 F.2d at 839 (stating  
23 specific jurisdiction over a defendant may be exercised only where the “‘nature and quality’  
24 of the defendant’s contacts with the forum state are significant *in relation to the specific*  
25 *cause of action*” (quoting *Data Disc, Inc.*, 557 F.2d at 1287) (emphasis added)).

26 Greystone falls far short of making a *prima facie* case for general jurisdiction. None  
27 of the traditional bases for exercising general jurisdiction over Santadsin are present in this  
28 case. Santadsin is domiciled in Arizona. (Doc. No. 26 ¶ 3.) There is no suggestion that

1 Santadsin was served with process in California. In fact, Santadsin asserts he has never  
2 been served with either complaint in this case. (Doc. No. 47-1 ¶ 17.) Furthermore, given  
3 the instant motion, it is clear that Santadsin does not consent to jurisdiction. (*See id.* ¶ 15.)  
4 The traditional bases for general jurisdiction over Fantasy are likewise absent. Fantasy is  
5 incorporated under the laws of Arizona with its principal (and only) place of business in  
6 Phoenix, Arizona. (Doc. No. 26 ¶ 2.)

7 As such, Greystone must show that this is an “exceptional case” before the Court  
8 may exercise general jurisdiction. The Court finds that it is not. First and foremost, the only  
9 marketing efforts and sales in California to which Greystone alludes are those of Kodi, a  
10 limited liability company that is *not* a defendant in this action. “It is well-established that  
11 a parent-subsidiary relationship alone is insufficient to attribute the contacts of the  
12 subsidiary to the parent for jurisdictional purposes.” *Harris Rutsky & Co. Ins. Servs., Inc.*  
13 *v. Bell & Clements Ltd.*, 328 F.3d 1122, 1134 (9th Cir. 2003). “Similarly, a holding  
14 company is not vicariously liable for the actions of its licensees.” *MMI, Inc. v. Baja, Inc.*,  
15 743 F. Supp. 2d 1101, 1110 (D. Ariz. 2010) (citing *Oberlin v. Marlin Am. Corp.*, 596 F.2d  
16 1322 (7th Cir. 1979)).

17 However, imputation of “a local entity’s contacts to its foreign affiliate” is  
18 permissible where plaintiff “demonstrates an alter ego relationship between the entities[.]”  
19 *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1079 (9th Cir. 2015). To demonstrate that the alter ego  
20 doctrine applies, a plaintiff “must make out a prima facie case ‘(1) that there is such unity  
21 of interest and ownership that the separate personalities [of the two entities] no longer exist  
22 and (2) that failure to disregard [their separate identities] would result in fraud or  
23 injustice.’” *Unocal Corp.*, 248 F.3d at 926 (quoting *Am. Tel. & Tel. Co. v. Compagnie*  
24 *Bruxelles Lambert*, 94 F.3d 586, 591 (9th Cir. 1996)).

25 To meet the first prong, a plaintiff must show “the parent controls the subsidiary ‘to  
26 such a degree as to render the latter a mere instrumentality of the former.’” *Id.* (quoting  
27 *Calvert v. Huckins*, 875 F. Supp. 674, 678 (E.D. Cal. 1995)). “This test envisions pervasive  
28 control over the subsidiary, such as when a parent corporation ‘dictates every facet of the

1 subsidiary's business—from broad policy decisions to routine matters of day-to-day  
2 operation.” *Ranza*, 793 F.3d at 1073 (quoting *Am. Tel. & Tel. Co.*, 94 F.3d at 591).

3 Greystone has failed to make a *prima facie* showing on the first prong. The facts  
4 before the Court are as follows: Santadsin is the sole member of both Fantasy and Kodi,  
5 both of which are LLCs. (Doc. No. 43-2 at 11.) Fantasy, however, is merely a holding  
6 company that owns the patent and trademark “Leluv,” as well as the leluv.com domain  
7 name. (Doc. No. 14-1 ¶ 1.) Kodi is Fantasy’s licensee, the former having been granted by  
8 the latter a license to “establish[] a domain name LeLuv.com and LeLuv.net on the internet  
9 for an ecommerce website with shopping cart.” (Doc. No. 43-3 at 8.) Neither common  
10 ownership nor the licensor-licensee relationship carry Greystone’s burden of showing that  
11 Kodi is a mere instrumentality of Fantasy. *United States v. Bestfoods*, 524 U.S. 51, 69  
12 (1998) (“it is entirely appropriate for directors of a parent corporation to serve as directors  
13 of its subsidiary” (citation omitted)); *MMI, Inc.*, 743 F. Supp. 2d at 1111 (“MMI’s evidence  
14 that ruralking.com and Rural King Holding [a holding company] share the same address  
15 and owner do not satisfy the first prong of the alter ego test because distinct legal entities  
16 may have a common address and ownership. Absent the allegation that Rural King Holding  
17 is involved in the operation of ruralking.com in any way, MMI has failed to state a *prima  
18 facie* case that Rural King Holding is an alter ego of ruralking.com.” (citations omitted)).

19 Likewise, Santadsin’s conduct of business in his capacity as a member and manager  
20 of Kodi does not render him subject to general jurisdiction in California. It is well  
21 established that a “corporate officer who has contact with a forum only with regard to the  
22 performance of his official duties is not subject to personal jurisdiction in that forum.”  
23 *Kransco Mfg., Inc. v. Markwitz*, 656 F.2d 1376, 1379 (9th Cir. 1981) (quoting *Forsythe v.  
24 Overmyer*, 576 F.2d 779, 783–84 (9th Cir. 1978)).

25 Even if Greystone carried its burden on the first prong, there is no showing that  
26 failure to disregard Defendants’ and Kodi’s separate identities would result in fraud or  
27 injustice. “[Greystone] provides no explanation why it cannot seek relief in an appropriate  
28 forum such as [Arizona], the [state] in which [Fantasy] is incorporated and has its principal

1 places of business" and in which Santadsin is domiciled. *Maple Leaf Adventures Corp. v.*  
2 *Jet Tern Marine Co.*, No. 15-CV-2504-AJB-BGS, 2016 WL 3063956, at \*8 (S.D. Cal.  
3 Mar. 11, 2016). Accordingly, the Court finds imputation of Kodi's contacts with California  
4 to Defendants to be improper.

5 Greystone contends imputation is appropriate because Santadsin is an agent of  
6 Fantasy, and "the actions of an agent are attributable to the principal." (Doc. No. 46 at 16.)  
7 In other words, Greystone invokes the agency theory of piercing the corporate veil for  
8 jurisdictional purposes and attributing a local entity's contacts to an out-of-state affiliate.  
9 Unfortunately for Greystone, "[t]he Supreme Court invalidated this test." *Ranza*, 793 F.3d  
10 at 1071. Thus, "[t]he agency test is [] no longer available to [Greystone] to establish  
11 jurisdiction over [Defendants]." *Id.* As such, the only theory for piercing the corporate veil  
12 available is the alter ego theory, and as discussed above, Greystone fails to show Kodi is  
13 an alter ego of either Defendant.

14 Even if it were appropriate to impute Kodi's business dealings in California to  
15 Defendants, the information provided is insufficient to establish this is an "exceptional  
16 case" making the exercise of general jurisdiction proper. First, the amount of sales Kodi  
17 has shipped to persons in California—specifically, \$232,837.12 in 32 months, or \$7279.29  
18 per month, (Doc. No. 46-1 ¶ 3)—is, for purposes of the instant inquiry, trivial. *See Focht*  
19 v. *Sol Melia S.A.*, No. C-10-0906 EMC, 2012 WL 162564, at \*7 (N.D. Cal. Jan. 19, 2012)  
20 (finding \$11 million in annual revenue insufficient to establish general jurisdiction).  
21 Second, Greystone provides no information concerning whether Kodi "does a majority—  
22 or even a sizeable portion—of its business in California . . . . In fact, [Greystone] provides  
23 no information whatsoever concerning the volume of business [Kodi] conducts in  
24 California as opposed to" business it conducts in the rest of the country. *Maple Leaf*  
25 *Adventures Corp.*, 2016 WL 3063956, at \*4.

26 In short, the Court finds general jurisdiction over Defendants does not exist here.

27 **II. Specific Jurisdiction**

28 Defendants next argue there is no specific jurisdiction over them in this case because

1 there are no facts suggesting they purposefully availed themselves of California. (Doc. No.  
2 28-1 at 9–15; Doc. No. 47 at 4–8.) Greystone responds that Defendants’ affirmative acts  
3 of soliciting Casady to make the \$500,000 loan, signing the note, and mailing payments to  
4 Casady under the note are sufficient, “by their very nature,” to establish purposeful  
5 availment. (Doc. No. 46 at 9–10.) Greystone further argues that the leluv.com website and  
6 Kodi’s sales to California consumers also establish purposeful availment. (*Id.* at 10–17.)

7 The Court may exercise specific jurisdiction over a defendant where the “‘nature  
8 and quality’ of the defendant’s contacts with the forum state are significant in relation to  
9 the specific cause of action.” *Decker Coal Co.*, 805 F.2d at 839 (quoting *Data Disc, Inc.*,  
10 557 F.2d at 1287). Courts in the Ninth Circuit use a three-prong test to make this  
11 determination. *Id.* First, “[t]he nonresident defendant must do some act or consummate  
12 some transaction with the forum or perform some act by which he purposefully avails  
13 himself of the privilege of conducting activities in the forum, thereby invoking the benefits  
14 and protections of its laws.” *Haisten v. Grass Valley Med. Reimbursement Fund, Ltd.*, 784  
15 F.2d 1392, 1397 (9th Cir. 1986). Second, the plaintiff’s claim must arise out of or result  
16 from the defendant’s forum-related activities. *Id.* Third, the exercise of jurisdiction must  
17 be reasonable. *Id.*

18 The plaintiff bears the burden of establishing the first two prongs. *Schwarzenegger*,  
19 374 F.3d at 802. If the plaintiff satisfies this burden, “the burden then shifts to the defendant  
20 to ‘present a compelling case’ that the exercise of jurisdiction would not be reasonable.”  
21 *Id.* (quoting *Burger King Corp.*, 471 U.S. at 476–78). If the plaintiff fails to carry its  
22 burden, then “the jurisdictional inquiry ends and the case must be dismissed.” *Boschetto v.*  
23 *Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008) (citing *Pebble Beach Co. v. Caddy*, 453 F.3d  
24 1151, 1155 (9th Cir. 2006)).

25 The first prong encompasses two distinct concepts: “purposeful availment” and  
26 “purposeful direction.” *Schwarzenegger*, 374 F.3d at 802. The former applies to suits  
27 sounding in contract, the latter to suits sounding in tort. *Id.* Satisfaction of either test  
28 satisfies the first prong. *See id.* Greystone’s claims sound in contract, so only the purposeful

1 availment test will be analyzed. *See Roth v. Garcia Marquez*, 942 F.2d 617, 621 (9th Cir.  
2 1991) (applying purposeful availment test in breach of contract action).

3 The purposeful availment test is satisfied if the defendant has taken deliberate action  
4 within the forum state or if he or she has created continuing obligations to forum residents.  
5 *See Travelers Health Ass'n v. Commonwealth of Va.*, 339 U.S. 643, 647 (1950); *Ballard v.*  
6 *Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). The mere existence of a contract with an effect  
7 in the forum state is not sufficient to support jurisdiction. *Burger King Corp.*, 471 U.S. at  
8 478. Rather, the Court should take a realistic approach, considering the parties, prior  
9 negotiations, contemplated future consequences, terms of the contract, and the parties'  
10 actual course of dealing. *Id.* at 479. In making this assessment, the Court must consider  
11 only the defendant's actions. *See Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at  
12 416–17; *Sinatra v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1195 (9th Cir. 1988). In other  
13 words, actions instituted by the plaintiff bear no weight on this assessment. *Sinatra*, 854  
14 F.2d at 1195.

15 Greystone has failed to carry its burden of making a *prima facie* showing that  
16 Defendants have purposefully availed themselves of California. The amended complaint  
17 states that Defendants solicited the loan funds from Greystone. (Doc. No. 26 at 4 ¶ 9.)  
18 Defendants dispute the veracity of this statement, asserting Casady reached out to them  
19 about the business venture. (Doc. No. 28-1 at 9–12.) As the Court noted in its order  
20 dismissing the original complaint, whether Defendants initiated the transaction is highly  
21 pertinent to the instant inquiry because “[w]hen a California business seeks out [business  
22 opportunities] in other states . . . [and] deals with [foreign businesses] by out-of-state agents  
23 or by interstate mail and telephone, it is not entitled to force th[at business] to come to  
24 California to defend an action on the contract.” *Roth*, 942 F.2d at 621–22 (quoting *Thos.  
25 P. Gonzalez Corp. v. Consejo Nacional de Producion de Costa Rica*, 614 F.2d 1247, 1252  
26 (9th Cir. 1980)). (*See also* Doc. No. 15 at 9.) On the other hand, “solicitation of business  
27 in the forum state that results in business being transacted or contract negotiations will  
28 probably be considered purposeful availment.” *Sinatra*, 854 F.2d at 1195 (citing *Decker*

1 *Coal Co.*, 805 F.2d at 840).

2 Greystone's allegation in the amended complaint that Defendants solicited the note  
3 is belied by the evidence before the Court. *See Unocal Corp.*, 248 F.3d at 922 (requiring  
4 the court to accept only *uncontroverted* allegations in the complaint as true). Greystone  
5 curiously cites to Exhibit G for the proposition that Defendants "urgently needed business  
6 financing for 'start-up' defendant Fantasy [] and actively and aggressively solicited  
7 \$500,000 of these funds from a California lending source[.]" (Doc. No. 46 at 9.) Exhibit G  
8 is a declaration from Taylor Coleman, in which Coleman states,

9 Mr. Casady first contacted me back in 2008, informing me that he was  
10 interested in purchasing real estate that my former company owned and which  
11 was in bankruptcy at the time. We became friends thereafter, and he learned  
12 and inquired about the businesses I was engaged in with Mr. Santadsin. In  
13 fact, Mr. Casady expressed to me a desire to recruit third-party investors he  
14 knew to invest monies in such businesses.

15 (Doc. No. 43-4 at 19 ¶ 7.) Accordingly, Greystone's own evidence supports Defendants'  
16 version of events, namely, that Casady initiated discussions.

17 Greystone also points to the execution of the note, the California origination of the  
18 loan funds, payments made to California residents, and contemplated payment of the loan  
19 principal to Greystone as supporting a finding of purposeful availment. (Doc. No. 46 at 9–  
20 10.) Greystone's contention, however, ignores the Court's prior ruling in this case  
21 dismissing the original complaint for lack of personal jurisdiction. In that ruling, the Court  
22 found Defendants did not purposefully avail themselves of California where the facts  
23 before the Court showed that (1) negotiations took place in Arizona or via telephone and/or  
24 email; (2) Santadsin executed the note in Arizona; (3) the note demonstrated little  
25 contemplated future consequences in California, even though it required monthly interest  
26 payments to Casady and a single payment to Greystone; and (4) the note did not contain a  
27 choice-of-law provision or forum selection clause. (Doc. No. 15 at 9–11.)

28 "Under the law of the case doctrine, 'a court is generally precluded from  
reconsidering an issue that has already been decided by the same court, or a higher court

1 in the identical case.”” *Gallagher v. San Diego Unified Port Dist.*, 14 F. Supp. 3d 1380,  
2 1389 (S.D. Cal. 2014) (quoting *United States v. Cuddy*, 147 F.3d 1111, 1114 (9th Cir.  
3 1998)). However, the doctrine “should not be applied woodenly in a way inconsistent with  
4 substantial justice.” *United States v. Miller*, 822 F.2d 828, 832 (9th Cir. 1987).  
5 Accordingly, the Court has the discretion to depart from the law of the case if “(1) [t]he  
6 first decision was clearly erroneous; (2) an intervening change in the law has occurred; (3)  
7 the evidence on remand is substantially different; (4) other changed circumstances exist;  
8 or (5) a manifest injustice would result.” *Gallagher*, 14 F. Supp. 3d at 1389 (citing *Cuddy*,  
9 147 F.3d at 1114). “Failure to apply the doctrine of the law of the case absent one of the  
10 requisite conditions constitutes an abuse of discretion.” *United States v. Alexander*, 106  
11 F.3d 874, 876 (9th Cir. 1997).

12 Greystone offers no basis for departing from the law of the case, and the Court finds  
13 none exist. In fact, the evidence adduced since that order’s issuance confirms to the Court  
14 that personal jurisdiction in this case is lacking. In the prior order, the Court noted the  
15 importance of determining “whether Defendants, Greystone, or Casady initiated the  
16 transaction.” (Doc. No. 15 at 9.) Despite this guidance, Greystone has failed to proffer any  
17 proof that Defendants solicited Casady or otherwise initiated the transaction. As noted  
18 above, the affidavit Greystone provides actually supports *Defendants*’ contention that  
19 Casady approached them. As such, the Court will not revisit its determination that the prior  
20 dealings, negotiations, execution of the note, and contemplated future consequences (or  
21 lack thereof) fail to show Defendants purposefully availed themselves of California.

22 In its prior order, the Court did not address whether the funds’ California origin has  
23 any impact on the jurisdictional inquiry. It does not. Greystone does not suggest Defendants  
24 “ever requested that the checks be drawn on a [California] bank or that there was any  
25 negotiation between [the parties] with respect to the location or identity of the bank on  
26 which checks would be drawn.” *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at  
27 416. “Common sense and everyday experience suggest that, absent unusual circumstances,  
28 the bank on which a check is drawn is generally of little consequence to the payee and is a

1 matter left to the discretion of the drawer.” *Id.* at 416–17. As such, this factor has no impact  
2 on the Court’s analysis.

3 The leluv.com website and Kodi’s sales to California consumers are likewise wholly  
4 irrelevant to the specific jurisdiction inquiry in this case. It is Civil Procedure 101 that  
5 specific jurisdiction over a defendant may be exercised only where the plaintiff’s claims  
6 arise out of or result from the defendant’s forum-related activities. *Haisten*, 784 F.2d at  
7 1397. This is a straightforward breach of contract case. Whether Kodi sells adult products  
8 to California consumers is of no consequence to the instant matter.

9 Greystone nonetheless mounts a valiant effort to show that this case arises from  
10 Kodi’s sales:

11 Greystone provided the majority of “start-up” Fantasy’s funding for the  
12 launching of its business, which is now operating and selling its products to  
13 California residents. . . . From the outset, it was clear that a portion of the  
14 monies generated from its sales operations Word of [sic] utilized to make  
payments the [sic] Greystone note and ultimately, generate sufficient income  
to retire the note in its entirety.

15 Here, there is sufficient nexus since, quite simply, without the income  
16 generated in part from sales to California customers, the Fantasy defendants  
17 would be unable to make the payments under the note that they made from  
18 2000 [sic] through 2014. Accordingly, Greystone has a significant interest in  
19 the ongoing success of the Fantasy defendants’ business operations in  
California as well as elsewhere.

20 (Doc. No. 46 at 17–18.) The Court declines Greystone’s invitation to extend the doctrine  
21 of specific jurisdiction to breach of contract claims where a party makes payments under  
22 the contract when such payments are derived from sales to consumers in the forum.  
23 Greystone’s claim does not arise out of Kodi’s sales to consumers; it arises out of  
24 Defendants’ failure to fulfill their obligations under the note. The amended complaint  
25 acknowledges as much. (Doc. No. 26 at 1 (“This action arises out of [Defendants’] failure  
26 to repay a loan that it received from Greystone . . .”).) For this reason—in addition to the  
27 fact that imputing Kodi’s contacts to Defendants is improper, *see supra* Discussion Section  
28 I—the Court finds Kodi’s sales have no bearing on the specific jurisdiction inquiry. *See*

1 also *Williams*, 851 F.3d at 1024 (noting the Supreme Court abrogated the agency theory of  
2 piercing the corporate veil in both the general and specific jurisdiction context).

3 **III. Leave to Amend**

4 Greystone asks, in the event of a dismissal, that it be granted leave to amend. (Doc.  
5 No. 46 at 20.) Federal Rule of Civil Procedure 15(a)(2) instructs that leave to amend should  
6 be “freely give[n] when justice so requires.” However, courts can dismiss without leave to  
7 amend if “the allegation of other facts consistent with the challenged pleading could not  
8 possibly cure the deficiency[.]” *Swartz v. KPMG LLP*, 476 F.3d 756, 761 (9th Cir. 2007)  
9 (quoting *Albrecht v. Lund*, 845 F.2d 193, 195 (9th Cir. 1988)).

10 Here, there appears to be no way Greystone can cure the jurisdictional deficiencies  
11 noted herein. Notwithstanding having had the benefit of the Court’s prior order dismissing  
12 the complaint and jurisdictional discovery, Greystone was unable to come forward with  
13 any facts the Court had not already considered and rejected. This inability to make a prima  
14 facie case is readily apparent given that the discovery propounded and Greystone’s  
15 opposition all involve a non-party’s marketing and sales in California, despite making no  
16 effort to show that the non-party is either Defendant’s alter ego and in light of the Supreme  
17 Court’s clear abrogation of the agency theory of piercing the corporate veil. And, as  
18 explained, even if the Court considered those sales, the contacts are still insufficient. Based  
19 on the foregoing, the Court finds amendment would be futile. Accordingly, the Court  
20 **DENIES** Greystone’s request for leave to amend.

21 **CONCLUSION**

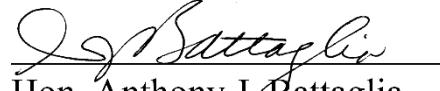
22 Based on the foregoing, the Court **GRANTS** Defendants’ motion to dismiss for lack  
23 of personal jurisdiction and **DISMISSES** the amended complaint **WITH PREJUDICE**.  
24 (Doc. No. 28.) This case is now **CLOSED**.

25 To be clear, the Court’s dismissal affects only Greystone’s ability to pursue its  
26 claims in the Southern District of California. It appears that the District of Arizona has  
27 personal jurisdiction over Defendants and that Greystone can still timely refile its claims  
28 there regardless whether California or Arizona state law controls. Ariz. Rev. Stat. § 12-

1 548(A) (six-year limitations period for breach of contract claims); Cal. Civ. Proc. § 337  
2 (four-year period).

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4 **IT IS SO ORDERED.**

5 Dated: May 16, 2017

6   
7 Hon. Anthony J. Battaglia  
United States District Judge

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